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13 *BMW of North America LLC*

14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 BMW OF NORTH AMERICA, LLC, a Delaware
17 limited liability company,

18 Plaintiff,

19 v.

20 LYLE ANDREW EPSTEIN, an individual;
21 KORTEK SERVICES, INC., a Nevada corporation,

22 Defendants.

CASE NO:

**COMPLAINT FOR COMPENSATORY
AND PUNITIVE DAMAGES FOR
VIOLATION OF 49 U.S.C. § 32703(3),
VIOLATION OF 49 U.S.C. § 32703(2) AND
FRAUD**

23 Plaintiff, BMW of North America, LLC ("BMW NA"), for claims for relief against
24 defendants, and each of them, and complains and alleges as follows:

25 **JURISDICTION AND VENUE**

26 1. This Court has original subject matter jurisdiction of this action, pursuant to 28
27 U.S.C. § 1331 and 49 U.S.C. § 32710(b), because this action arises under the laws of the United
28 States. This Court also has original subject matter jurisdiction of this action, pursuant to 28 U.S.C. §

1 1332(a)(3), because it is between citizens of different states and the matter in controversy exceeds
2 the sum or value of \$75,000, exclusive of interest and costs. This Court has supplemental subject
3 matter jurisdiction over the claims set forth in this Complaint pursuant to 28 U.S.C. § 1367(a),
4 because the claims set forth herein are so related to the claims in the action within the Court's
5 original jurisdiction that they form part of the same case or controversy under Article III of the U.S.
6 Constitution.

7 2. Venue is proper in this district, pursuant to 28 U.S.C. § 1391(b) because, among other
8 things, defendants reside in this district and a substantial part of the events or omissions giving rise
9 to BMW NA's claims occurred in this district.

10 **THE PARTIES**

11 3. BMW NA is, and at all times herein mentioned was, a Delaware limited liability
12 company with its principal place of business in Woodcliff Lake, New Jersey.

13 4. BMW NA is informed and believes, and based thereon alleges, that Lyle Andrew
14 Epstein ("Epstein") is, and at all times herein mentioned was, an individual residing and doing
15 business in Las Vegas, Nevada.

16 5. BMW NA is informed and believes, and based thereon alleges, that Kortek Services,
17 Inc. ("Kortek") is a Nevada corporation whose principal place of business was formerly in Las
18 Vegas, Nevada, but whose charter has been revoked as of the date hereof.

19 **FIRST CLAIM FOR RELIEF**

20 **(Violation of 49 U.S.C. § 32703(2) -- Epstein)**

21 6. The allegations of paragraphs 1 through 5, inclusive, are incorporated by this
22 reference into this claim for relief insofar as the same may be relevant hereto.

23 7. On or about September 28, 2004, Epstein purchased a new 2004 BMW X3 3.0i
24 automobile, chassis no. WD00270 ("Vehicle 1") with a manufacturer's suggested retail price of
25 \$44,970.00.

26 8. Pursuant to its New Vehicle Limited Warranty, BMW NA warranted Vehicle 1
27 against defects in material or workmanship for a period of 48 months or 50,000 miles, whichever
28 occurs first. Vehicle 1 was also covered by BMW NA's full maintenance program, which covers all

1 factory recommended maintenance for a period of 48 months or 50,000 miles, whichever occurs
2 first.

3 9. The New Vehicle Limited Warranty is null and void "if the odometer has been
4 replaced or altered and the true mileage cannot be determined." Similarly, the full maintenance
5 program excludes "alteration" and "odometer irregularities or vehicles where the true mileage cannot
6 be determined."

7 10. On or about July 29, 2005, Epstein presented Vehicle 1 for service and/or repair,
8 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
9 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
10 represented to BMW NA, among other things, that Vehicle 1 had only been driven 5,635 miles, as
11 shown on the odometer.

12 11. On or about September 6, 2005, Epstein presented Vehicle 1 for service and/or repair,
13 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
14 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
15 represented to BMW NA, among other things, that Vehicle 1 had only been driven 6,221 miles, as
16 shown on the odometer.

17 12. On or about January 6, 2006, Epstein presented Vehicle 1 for service and/or repair,
18 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
19 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
20 represented to BMW NA, among other things, that Vehicle 1 had only been driven 15,733 miles, as
21 shown on the odometer.

22 13. On or about August 23, 2006, Epstein presented Vehicle 1 for service and/or repair,
23 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
24 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
25 represented to BMW NA, among other things, that Vehicle 1 had only been driven 22,541 miles, as
26 shown on the odometer.

27 14. On or about March 17, 2007, Epstein presented Vehicle 1 for service and/or repair,
28 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's

1 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
2 represented to BMW NA, among other things, that Vehicle 1 had only been driven 23,436 miles, as
3 shown on the odometer.

4 15. On or about March 30, 2007, Epstein presented Vehicle 1 for service and/or repair,
5 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
6 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
7 represented to BMW NA, among other things, that Vehicle 1 had only been driven 23,929, miles, as
8 shown on the odometer.

9 16. BMW NA is informed and believes, and based thereon alleges, that before presenting
10 Vehicle 1 for service and/or repair, as alleged above, Epstein and/or his agents had disconnected,
11 reset, or altered the vehicle's odometer with the intent to change the mileage registered by the
12 odometer, so that the true mileage could not be determined, in violation of 49 U.S.C. § 32703(2)
13 and Nev. Rev. Stat. § 484D.310.

14 17. BMW NA is informed and believes and based thereon alleges that, on the dates
15 Epstein presented Vehicle 1 for service and/or repair, and represented to BMW NA that Vehicle 1
16 had only been driven the miles shown on the odometer, he knew the representations were false; he
17 knew the vehicle had in fact been driven substantially in excess of the miles shown on the odometer;
18 and he knew that the odometer had been disconnected, reset, or altered.

19 18. At the time these representations were made, BMW NA was ignorant of their falsity
20 but believed them to be true. In reliance thereon, BMW NA was induced to service and/or repair
21 Vehicle 1 under the New Vehicle Limited Warranty and the full maintenance program, which it
22 would not have done if it had known that the odometer had been disconnected, reset, or altered.

23 19. On or about October 26, 2011, BMW NA learned for the first time that Epstein's
24 representations were false and that the odometer had been disconnected, reset, or altered, prior to
25 presentation of the vehicle for service and/or repair.

26 20. By reason of the facts alleged, BMW NA has been damaged in a sum according to
27 proof at trial. Pursuant to 49 U.S.C. § 32710(a), Epstein is liable for three times BMW NA's actual
28 damages or \$1,500, whichever is greater. Pursuant to 49 U.S.C. § 32710(b), Epstein is also liable

1 for BMW NA's costs and reasonable attorneys' fees.

2 **SECOND CLAIM FOR RELIEF**

3 **(Fraud -- Epstein)**

4 21. The allegations of paragraphs 1 through 20, inclusive, are incorporated by this
5 reference into this claim for relief insofar as the same may be relevant hereto.

6 22. BMW NA is informed and believes, and based thereon alleges, that in committing the
7 acts alleged above, Epstein acted in conscious disregard of the rights of BMW NA and was guilty of
8 malice, oppression and/or fraud, in that Epstein altered Vehicle 1's odometer, or caused Vehicle 1's
9 odometer to be altered, with the intent to induce BMW NA to service and/or repair Vehicle 1 under
10 the New Vehicle Limited Warranty and the full maintenance program, even though Epstein was not
11 entitled to have Vehicle 1 serviced and/or repaired under the New Vehicle Limited Warranty and the
12 full maintenance program. Epstein's conduct warrants an assessment of punitive damages in an
13 amount appropriate to punish Epstein and deter others from engaging in similar wrongful conduct.

14 **THIRD CLAIM FOR RELIEF**

15 **(Violation of 49 U.S.C. § 32703(2) -- Epstein and Kortek)**

16 23. The allegations of paragraphs 1 through 5, inclusive, are incorporated by this
17 reference into this claim for relief insofar as the same may be relevant hereto.

18 24. On or about June 19, 2008, Epstein and Kortek purchased a new 2008 BMW X5 3.0si
19 automobile, chassis no. L029192 ("Vehicle 2"), for a total sales price of \$51,191.00.

20 25. Pursuant to its New Vehicle Limited Warranty, BMW NA warranted Vehicle 2
21 against defects in materials or workmanship for a period of 48 months or 50,000 miles, whichever
22 occurs first. Vehicle 2 was also covered by BMW NA's full maintenance program, which covers all
23 factory recommended maintenance for a period of 48 months or 50,000 miles, whichever occurs
24 first.

25 26. The New Vehicle Limited Warranty is null and void "if the odometer has been
26 replaced or altered and the true mileage cannot be determined." Similarly, the full maintenance
27 program excludes "alteration" and "odometer irregularities or vehicles where the true mileage cannot
28 be determined."

1 27. On or about June 22, 2009, defendants presented Vehicle 2 for service and/or repair,
2 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
3 authorized service and repair facilities. At the time the vehicle was presented, defendants
4 represented to BMW NA, among other things, that Vehicle 2 had only been driven 6,671 miles, as
5 shown on the odometer.

6 28. On or about July 1, 2009, defendants presented Vehicle 2 for service and/or repair,
7 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
8 authorized service and repair facilities. At the time the vehicle was presented, defendants
9 represented to BMW NA, among other things, that Vehicle 2 had only been driven 6,960 miles, as
10 shown on the odometer.

11 29. On or about July 9, 2009, defendants presented Vehicle 2 for service and/or repair,
12 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
13 authorized service and repair facilities. At the time the vehicle was presented, defendants
14 represented to BMW NA, among other things, that Vehicle 2 had only been driven 7,244 miles, as
15 shown on the odometer.

16 30. On or about August 17, 2009, defendants presented Vehicle 2 for service and/or
17 repair, under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
18 authorized service and repair facilities. At the time the vehicle was presented, defendants
19 represented to BMW NA, among other things, that Vehicle 2 had only been driven 9,840 miles, as
20 shown on the odometer.

21 31. On or about November 30, 2009, defendants presented Vehicle 2 for service and/or
22 repair, under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
23 authorized service and repair facilities. At the time the vehicle was presented, defendants
24 represented to BMW NA, among other things, that Vehicle 2 had only been driven 10,119 miles, as
25 shown on the odometer.

26 32. On or about December 4, 2009, defendants presented Vehicle 2 for service and/or
27 repair, under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
28 authorized service and repair facilities. At the time the vehicle was presented, defendants

1 represented to BMW NA, among other things, that Vehicle 2 had only been driven 10,441 miles, as
2 shown on the odometer.

3 33. BMW NA is informed and believes, and based thereon alleges, that before presenting
4 Vehicle 2 for service and/or repair, as alleged above, defendants and/or their agents had
5 disconnected, reset, or altered the vehicle's odometer with the intent to change the mileage registered
6 by the odometer, so that the true mileage could not be determined, in violation of 49 U.S.C. §
7 32703(2) and Nev. Rev. Stat. § 484D.310.

8 34. BMW NA is informed and believes and based thereon alleges that, on the dates
9 defendants presented Vehicle 2 for service and/or repair, and represented to BMW NA that Vehicle
10 2 had only been driven the miles shown on the odometer, defendants, and each of them, knew the
11 representations were false; they knew the vehicle had in fact been driven substantially in excess of
12 the miles shown on the odometer; and they knew that the odometer had been disconnected, reset, or
13 altered.

14 35. At the time these representations were made, BMW NA was ignorant of their falsity
15 but believed them to be true. In reliance thereon, BMW NA was induced to service and/or repair
16 Vehicle 2 under the New Vehicle Limited Warranty and the full maintenance program, which it
17 would not have done if it had known that the odometer had been disconnected, reset, or altered.

18 36. On or about October 26, 2011, BMW NA learned for the first time that defendants'
19 representations were false and that the odometer had been disconnected, reset, or altered, prior to
20 presentation of the vehicle for service and/or repair.

21 37. By reason of the facts alleged, BMW NA has been damaged in a sum according to
22 proof at trial. Pursuant to 49 U.S.C. § 32710(a), defendants are liable for three times BMW NA's
23 actual damages or \$1,500, whichever is greater. Pursuant to 49 U.S.C. § 32710(b), defendants are
24 also liable for BMW NA's costs and reasonable attorneys' fees.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Violation of 49 U.S.C. § 32703(2) -- Epstein and Kortek)**

27 38. The allegations of paragraphs 1 through 5 and 23 through 37, inclusive, are
28 incorporated by this reference into this claim for relief insofar as the same may be relevant hereto.

1 39. On or about September 15, 2009, defendants, through their attorney, falsely
2 represented to BMW NA that Vehicle 2 was defective and demanded that BMW NA repurchase or
3 replace the vehicle, under Nev. Rev. Stat. § 597.630, and pay their attorney's fees and costs.

4 40. Vehicles which have been abused, neglected, damaged, tampered with, modified
5 and/or altered are not eligible for replacement or refund the purchase price under Nev. Rev. Stat. §
6 597.630.

7 41. BMW NA is informed and believes and based thereon alleges that at the time
8 defendants represented to BMW NA that Vehicle 2 was defective and could not be repaired, and
9 demanded that BMW NA repurchase or replace Vehicle 2 and pay their attorney's fees and costs,
10 they knew the representation was false; they knew they were not entitled to have Vehicle 2
11 repurchased or replaced; they knew that the odometer had been disconnected, reset, or altered; they
12 knew that the alleged "defects" were not covered by the New Vehicle Limited Warranty or
13 maintenance program because the "defects" were caused by tampering rather than a defect in
14 material or workmanship; and they knew that vehicles which have been abused, neglected, damaged,
15 tampered with, modified or altered are not eligible for replacement or a refund under Nev. Rev. Stat.
16 § 597.630.

17 42. At the time these representations were made, BMW NA was ignorant of their falsity
18 but believed them to be true. In reliance thereon, BMW NA was induced to repurchase Vehicle 2 in
19 the sum of \$55,716.88 and to pay defendants' attorney's fees in the sum of \$2,000.00, which BMW
20 NA would not have done if it had known that the odometer had been disconnected, reset, or altered.

21 43. BMW NA is informed and believes, and based thereon alleges, that on or about
22 November 2, 2009, defendants transferred Vehicle 2 to BMW NA but did not make an accurate
23 written disclosure of the vehicle's mileage, as required 49 U.S.C. § 32705(a)(1). BMW NA is
24 further informed and believes, and based thereon alleges, that on or about November 2, 2009,
25 defendants made a false statement to BMW NA regarding the vehicle's mileage, in connection with
26 the transfer of the vehicle, in violation of 49 U.S.C. § 32705(a)(2).

27 44. On or about October 26, 2011, BMW NA learned for the first time that defendants'
28 representations were false and that the odometer had been disconnected, reset, or altered, prior to

1 presentation of the vehicle for service and/or repair.

2 45. By reason of the facts alleged, BMW NA has been damaged in a sum according to
3 proof at trial. Pursuant to 49 U.S.C. § 32710(a), defendants are liable for three times BMW NA's
4 actual damages or \$1,500, whichever is greater. Pursuant to 49 U.S.C. § 32710(b), defendants are
5 also liable for BMW NA's costs and reasonable attorneys' fees.

6 **FIFTH CLAIM FOR RELIEF**

7 **(Fraud -- Epstein and Kortek)**

8 46. The allegations of paragraphs 1 through 5 and 23 through 45, inclusive, are
9 incorporated by this reference into this claim for relief insofar as the same may be relevant hereto.

10 47. BMW NA is informed and believes, and based thereon alleges, that in committing the
11 acts alleged above, defendants, and each of them, acted in conscious disregard of the rights of BMW
12 NA and were guilty of malice, oppression and/or fraud, in that defendants altered Vehicle 2's
13 odometer, or caused Vehicle 2's odometer to be altered, with the intent to induce BMW NA to
14 service and/or repair Vehicle 2 under the New Vehicle Limited Warranty and the full maintenance
15 program, and to repurchase the vehicle, even though defendants were not entitled to have Vehicle 2
16 serviced and/or repaired under the New Vehicle Limited Warranty and the full maintenance
17 program, and were not entitled to have the vehicle repurchased. The defendants' conduct warrants
18 an assessment of punitive damages in an amount appropriate to punish defendants and deter others
19 from engaging in similar wrongful conduct.

20 **SIXTH CLAIM FOR RELIEF**

21 **(Violation of 49 U.S.C. § 32703(2) -- Epstein)**

22 48. The allegations of paragraphs 1 through 5, inclusive, are incorporated by this
23 reference into this claim for relief insofar as the same may be relevant hereto.

24 49. On or about December 26, 2009, Epstein purchased a new 2010 BMW X5 xDrive35d
25 automobile, chassis no. LT75748 ("Vehicle 3") with a manufacturer's suggested retail price of
26 \$59,075.00.

27 50. Pursuant to its New Vehicle Limited Warranty, BMW NA warranted Vehicle 3
28 against defects in materials or workmanship for a period of 48 months or 50,000 miles, whichever

1 occurs first. Vehicle 3 was also covered by BMW NA's full maintenance program, which covers all
2 factory recommended maintenance for a period of 48 months or 50,000 miles, whichever occurs
3 first.

4 51. The New Vehicle Limited Warranty is null and void "if the odometer has been
5 replaced or altered and the true mileage cannot be determined." Similarly, the full maintenance
6 program excludes "alteration" and "odometer irregularities or vehicles where the true mileage cannot
7 be determined."

8 52. On or about February 25, 2011, Epstein presented Vehicle 3 for service and/or repair,
9 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
10 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
11 represented to BMW NA, among other things, that Vehicle 3 had only been driven 3,720 miles, as
12 shown on the odometer.

13 53. On or about April 6, 2011, Epstein presented Vehicle 3 for service and/or repair,
14 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
15 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
16 represented to BMW NA, among other things, that Vehicle 3 had only been driven 4,135 miles, as
17 shown on the odometer.

18 54. On or about June 17, 2011, Epstein presented Vehicle 3 for service and/or repair,
19 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
20 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
21 represented to BMW NA, among other things, that Vehicle 3 had only been driven 6,233 miles, as
22 shown on the odometer.

23 55. On or about July 18, 2011, Epstein presented Vehicle 3 for service and/or repair,
24 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
25 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
26 represented to BMW NA, among other things, that Vehicle 3 had only been driven 7,617 miles, as
27 shown on the odometer.

28 56. On or about August 16, 2011, Epstein presented Vehicle 3 for service and/or repair,

1 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
2 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
3 represented to BMW NA, among other things, that Vehicle 3 had only been driven 10,688 miles, as
4 shown on the odometer.

5 57. On or about September 16, 2011, Epstein presented Vehicle 3 for service and/or
6 repair, under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
7 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
8 represented to BMW NA, among other things, that Vehicle 3 had only been driven 12,301 miles, as
9 shown on the odometer.

10 58. On or about October 26, 2011, Epstein presented Vehicle 3 for service and/or repair,
11 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
12 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
13 represented to BMW NA, among other things, that Vehicle 3 had only been driven 12,989 miles, as
14 shown on the odometer.

15 59. BMW NA is informed and believes, and based thereon alleges, that before presenting
16 Vehicle 3 for service and/or repair, as alleged above, Epstein and/or his agents had disconnected,
17 reset, or altered the vehicle's odometer with the intent to change the mileage registered by the
18 odometer, so that the true mileage could not be determined, in violation of 49 U.S.C. § 32703(2)
19 and Nev. Rev. Stat. § 484D.310.

20 60. BMW NA is informed and believes and based thereon alleges that, on the dates
21 Epstein presented Vehicle 3 for service and/or repair, and represented to BMW NA that Vehicle 3
22 had only been driven the miles shown on the odometer, he knew the representations were false; he
23 knew the vehicle had in fact been driven substantially in excess of the miles shown on the odometer;
24 and he knew that the odometer had been disconnected, reset, or altered.

25 61. At the time these representations were made, BMW NA was ignorant of their falsity
26 but believed them to be true. In reliance thereon, BMW NA was induced to service and/or repair
27 Vehicle 3 under the New Vehicle Limited Warranty and the full maintenance program, which it
28 would not have done if it had known that the odometer had been disconnected, reset, or altered.

62. On or about October 26, 2011, BMW NA learned for the first time that Epstein's representations were false and that the odometer had been disconnected, reset, or altered, prior to presentation of the vehicle for service and/or repair.

63. By reason of the facts alleged, BMW NA has been damaged in a sum according to proof at trial. Pursuant to 49 U.S.C. § 32710(a), Epstein is liable for three times BMW NA's actual damages or \$ 1,500, whichever is greater. Pursuant to 49 U.S.C. § 32710(b), Epstein is also liable for BMW NA's costs and reasonable attorneys' fees.

SEVENTH CLAIM FOR RELIEF

(Fraud -- Epstein)

64. The allegations of paragraphs 1 through 5 and 48 through 63, inclusive, are incorporated by this reference into this claim for relief insofar as the same may be relevant hereto.

65. BMW NA is informed and believes, and based thereon alleges, that in committing the acts alleged above, Epstein acted in conscious disregard of the rights of BMW NA and was guilty of malice, oppression and/or fraud, in that, among other things, Epstein altered Vehicle 3's odometer with the intent to induce BMW NA to service and/or repair Vehicle 3 under the New Vehicle Limited Warranty and the full maintenance program, even though Epstein was not entitled to have Vehicle 3 serviced and/or repaired under the New Vehicle Limited Warranty and the full maintenance program. Epstein's conduct warrants an assessment of punitive damages in an amount appropriate to punish Epstein and deter others from engaging in similar wrongful conduct.

EIGHTH CLAIM FOR RELIEF

(Fraud -- Epstein)

66. The allegations of paragraphs 1 through 5 and 48 through 65, inclusive, are incorporated by this reference into this claim for relief insofar as the same may be relevant hereto.

67. The New Vehicle Limited Warranty does not apply to the following:

(a) Damage which results from negligence, improper operation of the vehicle, improper repair, lack of or improper maintenance, environmental influences, flood, accident or fire damage, road salt corrosion, or use of improper or contaminated fuel.

(b) Damage to the engine, transmission or any related component caused by improper

1 shifting of the transmission.

2 (c) Failure to maintain the vehicle properly in accordance with the instructions in the
3 Owner's Manual or the Service section, that results in the failure of any part of the vehicle.

4 68. The full maintenance program does not cover damage which results from negligence,
5 improper operation of the vehicle, wear and tear or deterioration due to driving habits or conditions,
6 improper repair, environmental influences, flood, accident or fire damage, road salt corrosion,
7 alteration, installation of non-BMW accessories, or use of improper, poor quality or contaminated
8 fuel. It also does not cover vehicles with an altered or unreadable Vehicle Identification Number
9 (VIN) or odometer irregularities or vehicles where the true mileage cannot be determined.

10 69. Vehicles which have been abused, neglected, damaged, tampered with, modified
11 and/or altered are not eligible for replacement or refund the purchase price under Nev. Rev. Stat. §
12 597.630.

13 70. On or about February 25, 2011, Epstein presented Vehicle 3 for service and/or repair,
14 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
15 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
16 represented to BMW NA, among other things, that Vehicle 3 needed to be serviced and/or repaired
17 as a result of a defect in materials or workmanship.

18 71. On or about June 22, 2011, Epstein presented Vehicle 3 for service and/or repair,
19 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
20 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
21 represented to BMW NA, among other things, that Vehicle 3 needed to be serviced and/or repaired
22 as a result of a defect in materials or workmanship.

23 72. On or about October 26, 2011, Epstein presented Vehicle 3 for service and/or repair,
24 under the New Vehicle Limited Warranty and/or full maintenance program, at BMW NA's
25 authorized service and repair facilities. At the time the vehicle was presented, Epstein falsely
26 represented to BMW NA, among other things, that Vehicle 3 needed to be serviced and/or repaired
27 as a result of a defect in materials or workmanship.

28 73. BMW NA is informed and believes, and based thereon alleges, that before presenting

1 Vehicle 3 for service and/or repair, as alleged above, Epstein and/or his agents had abused,
2 neglected, damaged, tampered with and/or made unauthorized modifications or alterations to
3 Vehicle 3, so as to cause the alleged problem(s) with the vehicle of which Epstein complained.

4 74. BMW NA is informed and believes and based thereon alleges that, on the dates
5 Epstein presented Vehicle 3 for service and/or repair, and represented to BMW NA that Vehicle 3
6 needed to be serviced and/or repaired as a result of a defect in materials or workmanship, Epstein
7 knew the representations were false; he knew Vehicle 3 had in fact been abused, neglected,
8 damaged, tampered with, modified or altered; and he knew that Vehicle 3 was not eligible to be
9 serviced and/or repaired under the New Vehicle Limited Warranty and/or the full maintenance
10 program.

11 75. At the time these representations were made, BMW NA was ignorant of their falsity
12 but believed them to be true. In reliance thereon, BMW NA was induced to service and/or repair
13 Vehicle 3 under the New Vehicle Limited Warranty and the full maintenance program, which it
14 would not have done if it had known that the vehicle had been abused, neglected, damaged,
15 tampered with, modified or altered.

16 76. On or about October 26, 2011, BMW NA learned for the first time that Epstein's
17 representations were false and that Vehicle 3 had been abused, neglected, damaged, tampered with,
18 modified or altered prior to presentation of the vehicle for service and/or repair.

19 77. By reason of the facts alleged, BMW NA has been damaged in a sum according to
20 proof at trial.

21 78. BMW NA is informed and believes, and based thereon alleges, that in committing the
22 acts alleged above, Epstein acted in conscious disregard of the rights of BMW NA and was guilty of
23 malice, oppression and/or fraud, in that Epstein and/or his agents damaged, tampered with or altered
24 Vehicle 3 with the intent: (a) to induce BMW NA to service and/or repair Vehicle 3 under the New
25 Vehicle Limited Warranty and the full maintenance program, even though Epstein was not entitled
26 to have Vehicle 3 serviced and/or repaired under the New Vehicle Limited Warranty and the full
27 maintenance program; and (b) to fabricate a record of repair attempts so as to be able to demand that
28 BMW NA replace Vehicle 3 or refund the purchase price pursuant to Nev. Rev. Stat. § 597.630,

1 even though Epstein was not entitled to replacement of Vehicle 3 or a refund of the purchase price.
2 Epstein's conduct warrants an assessment of punitive damages in an amount appropriate to punish
3 Epstein and deter others from engaging in similar wrongful conduct.

4 WHEREFORE, BMW OF NORTH AMERICA, LLC prays for judgment against defendants,
5 and each of them, as follows:

- 6 (a) For damages according to proof at trial, plus interest thereon at the maximum legal
7 rate;
8 (b) For three times actual damages, pursuant to 49 U.S.C. § 32710(a);
9 (c) For punitive damages;
10 (d) For costs incurred herein, including reasonable attorneys' fees, pursuant to 49 U.S.C.
11 § 32710(b); and
12 (e) For such other and further relief as the Court may deem just and proper.

13 DATED this 29 day of November, 2011.

14
15 **WILSON, ELSER, MOSKOWITZ, EDELMAN
& DICKER LLP**

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DEMAND FOR JURY TRIAL

Plaintiff BMW OF NORTH AMERICA, LLC demands trial by jury.

DATED this 29 day of November, 2011.

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